

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service's Review of)	
The Definition of Universal Service)	

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Federal-State Joint Board on Universal Service's (Joint Board) Public Notice (Notice) released August 21, 2001. The Joint Board seeks comment on the definition of universal service and the implications of any proposed modifications to the list of core services. The Joint Board also seeks comment on what, if any, services should be added to or removed from the list of core services eligible to receive federal universal service support.¹ Specifically, the Joint Board seeks comment on the possible addition of "advanced or high-speed" services, redefining "voice grade" service to ensure some minimal level of data transmission for access to the Internet, various usage services,² and/or "warm lines" or "soft dial tone" to the list of core services.

Any changes to the list of services eligible for universal service funding will have ramifications beyond federal funding for universal service. Additions to the list of "core services" will increase not only the federal fund, but ultimately place upward pressure on telephone subscribers' basic service bills.

The NYDPS opposes the addition of "advanced or high-speed" services to the list of core services because they do not meet the criteria Congress established for adding

¹ The current list, established in 1997, includes: single-party service; voice grade access to the public switched telephone network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator service; access to interexchange service; access to directory assistance; and, toll limitation services for qualifying low-income consumers.

² The possible usage services include interstate and intrastate toll, extended area services, and prepaid calling plans.

services or capabilities to the list of supported services. Similarly, the proposal to redefine voice grade service does not meet those criteria. Finally, the universal provisioning of “warmline” or “soft dial tone” capabilities is a matter better left to each individual state to determine.

I. The Federal Definition of Universal Service Will Set the Standard for Nationwide Basic Service

The Federal Communications Commission (Commission) asked the Joint Board to review the list of core services “supported by federal universal support mechanisms” and to recommend any modifications. That list will define far more than just the services that are eligible to receive federal support. As a practical matter, any addition to the list of “core” services will define the minimum level of telephone service received by all subscribers whether or not they receive federal support. Consequently, adding new services or capabilities to the list will increase both a telephone subscriber’s payments to the universal service fund as well as the bill for his/her own “basic” service.

The purpose of these broad-based universal service programs is to ensure that everyone receives a minimum level of telephone service.³ They are not merely intended to make telephone service available to those who can afford it and choose to pay for it. That this is so is evident from our continuing efforts to increase subscription levels to the current core services among certain groups, even though the service is nominally available to them.⁴ Clearly, we have not achieved “universal service” when even a small percentage of the population does not subscribe to at least “basic” service.

The expectation for universal service is that basic service will be present in every home. We evaluate our progress toward universal service by measuring the availability of a telephone in every home, not by whether phone service may be accessible next door or down the street or at work. Hence, universal service is not simply about making the

³ For example, high cost and low income programs.

⁴ The Commission’s actions to increase subscription in Native American communities and the Joint Board’s recent request for comment on low income programs designed to increase subscribership among low-income populations are examples of the importance of increasing telephone usage.

core capabilities available in every community or to some particular segment of the population, it is about making at least those core capabilities present in every home.⁵

II. Congress Set Stringent Standards for Expanding the List of Core Services

Under Section 254(c)(1)(A)-(D) the Joint Board and the Commission are required to consider the extent to which particular telecommunication services:

- (1) are essential to education, public health, or public safety;
- (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (3) are being deployed in public telecommunications networks by telecommunications carriers; and
- (4) are consistent with the public interest, convenience, and necessity.

The first criterion requires that a supported capability must be necessary, not simply useful or convenient, to education, public health, or public safety, not to just any endeavor, such as economic development, personal entertainment, or even the general operation of government. The second criterion requires that the capability already be “subscribed to by a substantial majority of residential customers,” meaning that far more than 50% of residential customers already receive the service. The third criterion means that the capability is not just technically feasible, but has been widely deployed in the networks. Finally, the fourth criterion adds the further requirement that a supported capability meets a general “public interest” standard, which might include an evaluation of the cost to the public of making a capability universal.

These stringent standards for federal universal service funding eligibility suggest a desire to limit the scope of these general universal service programs. Some might argue that such standards would be at odds with Congress’ stated desire to encourage deployment of advanced telecommunications and information services. On the contrary, while Congress clearly sought to encourage deployment of new services, it evinced an

⁵ This view is further supported by Section 214(e), which requires a carrier “to offer the services that are supported by Federal universal service support mechanisms under section 254(c)” throughout the service area in which it seeks to be eligible to receive federal universal service support. All, not just some, supported services must be offered, and they must be offered to everyone, not just a few, in the service area. 47 U.S.C. § 214 (e)(1).

unmistakable preference to rely on the private sector, through competitive markets, to determine the scope and pace of such deployment.⁶ Broad-based universal service programs authorized in section 254 serve to fill in any remaining gaps in subscription once those competitive markets have identified any truly necessary services or capabilities. Moreover, the limits placed on the role of broad-based universal service programs do not preclude the use of other government programs (e.g., RUS or NTIA initiatives) to effect more targeted support of such capabilities.

III. “Advanced or High-Speed” Services Do Not Meet the Criteria for Supported Services

High-speed Internet access does not meet the Telecommunication Act’s (Act) eligibility criteria for federal universal service support and, therefore, should not be added to the list of core capabilities.⁷

High-speed Internet access is not “subscribed to by a substantial majority of residential customers.” The data most recently released by the Commission indicates that there were only 5.2 million residence and small business high-speed and advanced service lines subscribed to at year-end 2000.⁸ Since there are more than 100 million households in the United States, this would suggest that no more than five percent (5%) of households chose to subscribe to high-speed Internet access by the end of last year. While subscription rates are increasing, there is no evidence to suggest that a “substantial majority” of households currently subscribe to high-speed Internet access in any form. Thus, high-speed and/or advanced services fail to meet the Act’s requirement that a substantial majority of residential customers have subscribed to the capability.

⁶ See, for example, Section 706(a) of the Telecommunications Act of 1996, directing regulators to utilize “price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment” to encourage deployment of advanced telecommunications capability.

⁷ Although Congress did not define the terms “advanced or high-speed services,” the Commission uses “advanced services” to mean those that provide transmission at 200 kbps or greater in both directions and “high-speed services” to mean those that provide such transmission speeds in one direction. As a practical matter, in the present context, these terms mean “high-speed” Internet access, since there is no other common residential application requiring such transmission speeds.

⁸ “High-Speed Services for Internet Access: Subscribership as of December 31, 2000,” Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, issued August 2001. See Table 3.

Moreover, high-speed Internet access in the home is not “essential to education, public health, or public safety” pursuant to section 254(c)(1). While the Internet is a valuable means of communication with clear educational, public health, and public safety uses, it is not clear that high-speed Internet access in every home is “essential.” According to the Pew Internet & American Life Project, of those who have Internet access (any speed) little more than half have ever done research for school or training (53%), visited a government website (51%), or searched for health information (57%).⁹ On an average day, less than 10% of those with Internet access engage in any of those activities.¹⁰ Nor is there any evidence that high-speed access, which is necessary only for “bandwidth-intensive” transmissions, such as audio and video, would provide capabilities so superior to other available communications, such as radio and television, as to render it “essential” for those activities.

Accordingly, the Joint Board should not recommend including “advanced or high-speed service” in the list of capabilities supported by federal universal service funds.

IV. Low-speed, Dial-up Internet Access Also Does Not Meet the Criteria for Supported Services

Similarly, low-speed, dial-up Internet access fails to meet the Act’s criteria for inclusion among the capabilities supported by federal universal service funds.

Little more than 40% of households had any form of Internet access in 2000. According to the National Telecommunications and Information Administration, only 41.5% of U.S. households had Internet access (any speed) in 2000. Even allowing for growth, it would not appear that “a substantial majority” of residential customers subscribe today.¹¹ Furthermore, it appears that those who do subscribe to Internet access in the home make only limited use of it for activities that relate to education, public health, or public safety. Therefore, even dial-up Internet access fails to meet the criteria for federal universal service support noted above.

⁹ http://www.pewinternet.org/reports/chart.asp?img=6_internet_activities.jpg, viewed Oct. 22, 2001.

¹⁰ http://www.pewinternet.org/reports/chart.asp?img=6_internet_activities.jpg, viewed Oct. 22, 2001.

¹¹ <http://www.ntia.doc.gov/ntiahome/fttn00/charts00.html#f4>, Figure I-3, viewed Oct. 22, 2001.

Thus, the Joint Board should not recommend redefining “voice grade” service to ensure some minimal level of data transmission for access to the Internet.

**V. “Warmline” or “Soft Dial Tone” Should Not Be
Added to the Capabilities Required to Be
Included in Universal Service**

“Warmline” or “soft dial tone” allows a line taken out of service through termination or suspension to still be used to access emergency assistance (911) or to access a local telephone company business office. The first of these potential uses has obvious public safety benefits, while the latter may simply provide convenience to a new or returning customer or may be useful in cases when a local carrier withdraws service in a market. Nevertheless, a number of issues attendant to this capability, including the cost of facilities, what business office or announcement might be reached, and in what circumstances and for how long the capability must be maintained, are issues best addressed on the state level based on specific local conditions.

The New York Public Service Commission commenced a collaborative proceeding to examine a number of issues, including whether “soft dial tone” should be required.¹² The parties considered requiring “soft dial tone” on a permanent basis. The cost of “soft dial tone” is expensive and was ultimately rejected for all lines. Instead, the Commission promulgated regulations that called for “soft dial tone” on a temporary basis when the line is being fixed or is temporarily suspended for non-payment. These issues focused on the appropriate balances in New York and may not be the same for other states. Finally, there is no compelling reason for either a national solution of these issues or federal funding of the capability.¹³

As such, we recommend against inclusion of “warmline” or “soft dial tone” in the list of capabilities supported by the federal universal service mechanism.

¹² Case No. 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Memorandum and Resolution Adopting Revisions of Parts 602, 603 and § 644.2 of 16 NYCRR, (rel. October 6, 2000).

¹³ Moreover, “soft dial tone” has not been shown to meet the criteria for adding to the list of universal service capabilities. It has not been shown that it is subscribed to by a substantial majority of subscribers, nor has it been shown that it is being widely deployed in public telecommunications networks.

CONCLUSION

The federal universal service programs at issue here are intended to ensure that all households have a minimum level of telephone service. The Joint Board must identify those telecommunications capabilities that everyone should have in their homes, consistent with the eligibility criteria enumerated by Congress. Since high-speed Internet access does not meet those requirements, the NYDPS opposes the addition of “advanced or high-speed” services to the list of core capabilities. For the same reasons, we oppose the proposal to redefine voice grade service to ensure some minimum level of “data” transmission. Finally, we recommend against requiring “warmline” or “soft dial tone” capability to be included in the service list eligible for federal universal service support, as the issues surrounding provisioning of that capability are matters best resolved at the state level.

Respectfully submitted,

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